

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE CLASSMATES.COM  
CONSOLIDATED LITIGATION

MASTER CASE NO. C09-45RAJ  
ORDER

(APPLIES TO ALL ACTIONS)

**I. INTRODUCTION**

This matter comes before the court on Plaintiffs' motion (Dkt. # 73) for preliminary approval of a settlement with Defendants, including preliminary certification of a settlement class. Defendants do not oppose the motion. The court GRANTS the motion subject to the limitations stated below, and sets a hearing on October 27, 2010, at 10:00 a.m. to determine whether the settlement should be made final.

**II. BACKGROUND**

Defendants, who the court will refer to collectively as "Classmates," operate a website at [www.classmates.com](http://www.classmates.com). The website contains records of millions of people organized according to high school graduating class, college graduating class, and other similar groupings. People gain various levels of access to the records by registering for unpaid and paid Classmates memberships.

This consolidated class action is an amalgamation of two suits that Anthony Michaels and Xavier Vasquez filed challenging various Classmates practices. The court consolidated the suits, and Mr. Michaels' counsel was appointed interim class counsel.

1 At the court's direction, class counsel filed an amended complaint to govern all claims in  
2 the consolidated action. They dropped Mr. Vasquez as a Plaintiff and added David  
3 Catapano. The consolidated complaint asserts only Washington law causes of action,  
4 including claims under the Washington Consumer Protection Act ("CPA") and the  
5 Washington Commercial Electronic Mail Act ("CEMA").

6 The consolidated complaint describes Classmates' deceptive practices to induce  
7 users to pay for subscriptions. In one such practice, Classmates sent e-mails to unpaid  
8 members informing each of them that someone with whom they went to high school or  
9 college or the like was seeking contact with them or had visited their Classmates profile.  
10 Each e-mail informed the member that he could communicate with that person by  
11 upgrading to a paid membership. Plaintiffs allege that they paid for a membership in  
12 response to this practice, only to discover that no one (or at least no one known to them)  
13 had visited their profile or sought contact with them. Numerous variations on this  
14 deceptive practice are described in the consolidated complaint.

15 The parties propose a settlement in which Mr. Michaels and Mr. Catapano  
16 (residents of California and Nevada, respectively) will serve as representatives of a  
17 nationwide class of all registered Classmates users since October 30, 2004. In addition,  
18 they will represent a subclass of approximately 3.1 million "Gold Members." A gold  
19 membership is a paid classmates.com membership, and is apparently the membership  
20 package to which Plaintiffs subscribed because of the deceptive Classmates practices  
21 described above. Plaintiffs define the subclass to include only Classmates users who  
22 likely became Gold Members in response to one of Classmates' deceptive practices.  
23 Although the court follows Plaintiffs' lead in referring to these Gold Members as a  
24 "subclass," the court notes that the class is defined so that it excludes all subclass  
25 members. The proposed class and subclass thus share no members in common. The  
26 court refers to the two mutually exclusive classes as the "main class" and the subclass.

1 When referring to all members of both classes, the court will use the generic term “class  
2 members.”

3 The principal features of the settlement are a Classmates credit for main class  
4 members, a credit or cash payment to subclass members, and a three-year injunction  
5 targeting the challenged Classmates practices. Main class members may claim a \$2  
6 credit to be used toward a paid Classmates membership. Subclass members may claim  
7 the credit, or they may claim a \$3 cash payment, up to a maximum cash outlay of \$9.5  
8 million. The injunction requires Classmates to include disclosures on its website about  
9 the “Guestbook” feature on which many of its allegedly deceptive practices are focused,  
10 and also include disclosures to enable users to better protect their personal information.

11 In exchange, Classmates will receive a broad release of all claims from class  
12 members, including not only the Washington law claims asserted in the consolidated  
13 complaint, but claims under federal law or any state’s law. Classmates admits no  
14 wrongdoing in the settlement.

15 Class counsel will seek attorney fees. They will request no more than \$1.3 million  
16 in attorney fees, although they may also seek costs, as well as a \$2500 incentive payment  
17 for Mr. Catapano and Mr. Michaels.

18 Notice to class members will be accomplished electronically via the last e-mail  
19 address that each class member provided to Classmates, and also via a Wall Street  
20 Journal advertisement. Because of the large number of class members, Plaintiffs have  
21 requested at least 90 days between preliminary approval of their settlement and the  
22 deadline for completing notice. Main class and subclass members would then be required  
23 to submit a claim form (with the option to do so via e-mail) if they wish to claim either  
24 the credit or the cash payment.

25 The court now turns to its preliminary approval analysis.

### III. ANALYSIS

The parties' agreement to settle this matter is not itself a sufficient basis for approving the settlement. The settlement would require the court to certify a class and dispose of the claims of its members. The court has an independent obligation to protect class members. *Silber v. Mabon*, 957 F.2d 697, 701 (9th Cir. 1992). Even for a class certified solely for purposes of settlement, the court must ensure that the class and its proposed representatives meet the requirements of Fed. R. Civ. P. 23. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). In addition, the court must ensure that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

Both the main class and subclass satisfy the four prerequisites of Rule 23(a). The parties estimate that there are 3.1 million subclass members. The consolidated complaint estimates the number of main class members at about 50 million. Both the subclass and the main class therefore satisfy the numerosity requirement of Rule 23(a)(1).

The class members' claims satisfy the minimal commonality standard of Rule 23(a)(2). Determining whether Classmates' inducements for paid memberships violated the CPA or CEMA presents numerous common questions of law and fact. A single common question suffices for purposes of Rule 23(a)(2). *E.g., Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 648 (C.D. Cal. 1996).

Mr. Catapano and Mr. Michaels have claims that are typical of the claims of subclass members. They allege that they paid for memberships as a result of Classmates' deceptive practices, and the subclass is defined such that it is likely that other subclass members did so as well. Their claims are not obviously typical of main class members, however, because unlike them, Mr. Catapano and Mr. Michaels succumbed to deceptive Classmates practices. All class members, however, were targets of the deceptive practices, and Mr. Catapano and Mr. Michaels are typical main class members in at least that regard. The court concludes that the main class and subclass satisfy the typicality requirement of Rule 23(a)(3).

1 The court also finds that Mr. Catapano and Mr. Michaels are adequate class  
2 representatives, as Rule 23(a)(4) requires. To the extent that other class members have  
3 claims based on a sufficiently similar factual predicate, the record reflects that Mr.  
4 Catapano and Mr. Michaels can adequately represent them. Subject to the same  
5 limitation, interim class counsel are adequate to represent the main class and subclass.  
6 *See* Fed. R. Civ. P. 23(g).

7 To the extent class members have sufficiently different claims against Classmates,  
8 however, the class representatives' intent to force them to release all of their claims is  
9 suspect. *See, e.g., Hesse v. Sprint Corp.*, No. 08-35235, 2010 U.S. App. LEXIS 5017, at  
10 \*9-24 (9th Cir. Mar. 10, 2010) (concluding that representational inadequacy partially  
11 invalidated release of claims in a nationwide class action settlement). In *Hesse*, the court  
12 found that a broad release imposed on members of a nationwide class action had no  
13 preclusive effect on a later class action against the same defendant. *Id.* at \*9 ("We  
14 conclude . . . that the release cannot preclude the Washington Plaintiffs' claims because  
15 the [prior] Class Plaintiff did not adequately represent the Washington Plaintiffs and  
16 because the Washington Plaintiffs' claims are based on a set of facts different from those  
17 underlying the claims settled in the [prior] settlement."). The release in *Hesse* contained  
18 language much like the release Plaintiffs propose here. *Id.* The court makes no finding  
19 as to whether Plaintiffs are adequate representatives of class members for any claims  
20 other than those sufficiently similar, as described in *Hesse*, to those asserted in the  
21 consolidated complaint. The court need not demand a narrower release, however,  
22 because a future court called upon to determine the preclusive effect of this settlement  
23 will narrow it appropriately. To the extent the release is too broad, Classmates may  
24 obtain less than it bargained for.

25 The court concludes that the main class and subclass meet the requirements of  
26 Rule 23(b)(3). Typically, Rule 23(b)(3) serves to ensure that a class action is the best

1 means of resolving a dispute. When the parties settle a class action, many of the concerns  
2 articulated in the rule do not apply, because a negotiated resolution moots some of the  
3 practical difficulties of resolving the dispute on a classwide basis. *Amchem Prods., Inc.*  
4 *v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only  
5 class certification, a district court need not inquire whether the case, if tried, would  
6 present intractable management problems.”). The common legal and factual questions  
7 related to Classmates allegedly deceptive tactics predominate over any individualized  
8 concerns. There is nothing in the record that suggests this court is an undesirable forum  
9 for resolving those claims.

10 Plaintiffs propose to use e-mail to notify class members of class certification, this  
11 settlement, and their obligations to submit a claim for either a credit or cash payment. E-  
12 mail notice is an excellent option here, where every class member provided an e-mail  
13 address to Classmates in the process of registering as a user. Given the large number of  
14 class members, e-mail notice also avoids the substantial expense of sending notice by  
15 mail. The court finds that Plaintiffs’ notice procedure satisfies the requirements of Rule  
16 23(c)(2)(B) (mandating “the best notice that is practicable under the circumstances”).  
17 The court also appreciates that Plaintiffs have enabled class members to return claim  
18 forms via e-mail. This is an important benefit, as the cost of postage would be a large  
19 portion of the relief that Classmates is offering to each class member. The court notes,  
20 however, that Plaintiffs have not given class members the option to opt out of the class  
21 via e-mail. The court sees no obvious reason for this. It thus orders Plaintiffs to enable  
22 class members to opt out via e-mail. If this requirement presents a problem, Plaintiffs  
23 shall provide a statement as soon as possible explaining why.

24 The court has reviewed Plaintiffs’ proposed forms of notice to main class and  
25 subclass member. Those notices are adequate, but Plaintiffs must modify them to reflect  
26 this order, including the order to permit class members to opt out via e-mail.

1 Finally, Plaintiffs must allow the court to review the notice, opt-out, and claim  
2 submission features in their electronic format. Accordingly, the court directs class  
3 counsel to arrange for the court to receive electronic notice as soon as the technology is  
4 enabled. Counsel shall also notify the court when the settlement website they have  
5 promised to create becomes “live.”

6 The court now considers whether the settlement is “fair, reasonable, and adequate”  
7 as required by Rule 23(e)(2). The court begins by considering the financial relief. As to  
8 main class members, Classmates’ \$2 credit toward a paid membership is reasonable.  
9 Indeed, main class members have suffered no apparent financial harm, and thus  
10 Classmates’ agreement to offer them even modest compensation is fair. As to subclass  
11 members, the record shows that they paid between \$10 and \$40 to become Gold  
12 Members, with an average price around \$24. Classmates’ offer of \$3 is about an eighth  
13 of what the average subclass member paid. This is a reasonable discount, given the  
14 uncertainty of obtaining any recovery if this case went to trial.

15 The injunctive relief is an additional benefit to all class members. It requires  
16 Classmates to make disclosures that would blunt future deceptive marketing practices.

17 The court’s final observation regarding the fairness and adequacy of the settlement  
18 concerns attorney fees for class counsel. As the court just noted, the relief to class  
19 members is not, standing alone, unreasonable. Collectively, however, it is not certain  
20 what Classmates will pay to settle this action. There is no indication that its offer of  
21 credit toward paid memberships will hurt its bottom line. To the extent that the credit  
22 offer induces persons to pay for memberships that they otherwise would not, it may be a  
23 financial boon to Classmates. The offer of cash to subclass members is different, but  
24 perhaps not substantially so. For Classmates to pay out cash awards equaling the \$9.5  
25 million cap on the settlement, every one of the approximately 3.1 million subclass  
26 members would have to make a claim for the \$3 payment. As the parties are no doubt

1 aware, it is exceedingly unlikely that subclass members will do so. In the court's  
2 experience, class members typically do not bother to make claims for a few dollars of  
3 compensation. It is therefore highly likely that Classmates will pay only a tiny fraction of  
4 \$9.5 million. Class counsel has indicated that they will seek up to \$1.3 million in  
5 attorney fees. That amount is about 14% of \$9.5 million, and perhaps not coincidentally  
6 just below the 15% limit on attorney fees that class counsel agreed to in the event it  
7 sought fees as a percentage of a common fund awarded to class members. The court  
8 cannot forecast what counsel will request for attorney fees, and cannot forecast the  
9 methodology they will use to buttress that request. The court merely notes that if counsel  
10 move for an award of attorney fees that is disproportionate to the payout to class  
11 members, they should acknowledge as much, and explain why such a result is justified.  
12 Thus, Plaintiffs should plan on obtaining information from the settlement administrator  
13 regarding the number of class members making claims for cash payments, so that they  
14 may submit that information in conjunction with the final approval process.

15 For all of the reasons stated above, the court preliminarily approves this class  
16 action settlement. The remainder of this order reproduces Plaintiffs' proposed order,  
17 except that it inserts dates where appropriate, and modifies paragraph 8 to provide class  
18 members the option to opt out of the class via email. The preceding portion of this order  
19 shall control in the event of any conflict between Plaintiffs' language and the court's  
20 language.

#### 21 **IV. ORDER**

22 This matter comes before the Court on Plaintiffs' Motion for Preliminary  
23 Approval of Class Action Settlement. The parties have agreed, subject to final approval  
24 by this Court following notice to the Settlement Class and Settlement Subclass, as  
25 defined below, to settle this action upon the terms and conditions set forth in the  
26 Settlement Agreement. The Court has reviewed the Class Action Settlement Agreement,



as well as all files, records, and proceedings to date in this matter.

IT IS HEREBY ORDERED:

1. **Preliminary Approval of Proposed Settlement.** The Settlement Agreement is preliminarily approved as fair, reasonable and adequate. The Court also finds that notice to members of the Settlement Class and Settlement Subclass should be provided and a final fairness hearing on the Settlement Agreement should be held as set forth in this Order.

2. **Stay of Proceedings.** All proceedings in this action are hereby stayed and suspended until further order of the Court, except such actions as may be necessary to implement the Settlement Agreement and this Order.

3. **Class Findings.** Solely for the purposes of the Settlement Agreement, the Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the Settlement Class and Settlement Subclass defined below, in that:

(a) The Court preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(a)(1), the Settlement Class and Settlement Subclass are ascertainable from records maintained by Defendants, and the members of the Settlement Class and Settlement Subclass are so numerous that their joinder before the Court would be impracticable.

1 (b) The Court preliminarily finds for purposes of settlement only that, as  
2 required by FED. R. CIV. P. 23(a)(2), there are one or more questions of fact and/or law  
3 common to the Settlement Class and the Settlement Subclass.

4 (c) The Court preliminarily finds for purposes of settlement only that, as  
5 required by FED. R. CIV. P. 23(a)(3), the claims of the Plaintiffs are typical of the claims  
6 of the Settlement Class and Settlement Subclass.

7 (d) The Court preliminarily finds, for purposes of settlement only, as required  
8 by FED. R. CIV. P. 23(a)(4), that the Plaintiffs will fairly and adequately protect the  
9 interests of the Settlement Class and the Settlement Subclass in that: (i) the interests of  
10 the Plaintiffs and the nature of their alleged claims are consistent with those of the  
11 members of the Settlement Class and Settlement Subclass, (ii) there appear to be no  
12 conflicts between or among the Plaintiffs and the Settlement Class or Settlement  
13 Subclass, and (iii) the Plaintiffs and the members of the Settlement Class and Settlement  
14 Subclass are represented by qualified, reputable counsel who are experienced in  
15 preparing and prosecuting complex consumer class actions.

16 (e) The Court finds for purposes of settlement only that, as required by FED.  
17 R. CIV. P. 23(b)(2), final injunctive relief or corresponding declaratory relief is  
18 appropriate respecting the Settlement Class and Settlement Subclass as a whole.

19 (f) The Court finds for purposes of settlement only that, as required by FED.  
20 R. CIV. P. 23(b)(3), that questions of law or fact common to Settlement Class and  
21 Settlement Subclass members predominate over any questions affecting only individual  
22

members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

(g) The Court preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(g), Counsel for Plaintiffs (“Class Counsel”) are capable of fairly and adequately representing the interests of the Settlement Class and Settlement Subclass, in that Class Counsel (i) have done appropriate work identifying or investigating potential claims in the action; (ii) are experienced in handling class actions; (iii) are knowledgeable of the applicable law; and (iv) have committed the necessary resources to represent the Class.

4. **Class Certification.** The Court, in conducting the settlement approval process as required by FED. R. CIV. P. 23, preliminarily certifies the following Settlement Class and Settlement Subclass under FED. R. CIV. P. 23(b)(2) and 23(b)(3):

**“Settlement Class”**

All Persons, excluding Settlement Subclass members, residing in the United States who were registered with or subscribed to [www.classmates.com](http://www.classmates.com) at any time between October 30, 2004 and the date of entry of this Order.

**“Settlement Subclass”**

All Persons residing in the United States who registered with or subscribed to [www.classmates.com](http://www.classmates.com) and between January 1, 2007 and the date of entry of this Order, paid for a Gold Membership subscription to [www.classmates.com](http://www.classmates.com) (and did not previously receive a refund of such payment) as a result of:

1. Upgrading to a Gold Membership through the process on Classmates.com of seeking to see who visited their Guestbook; or
2. Upgrading to a Gold Membership after clicking on a link to Classmates.com in a Guestbook email, or Connections email that included a Guestbook subject

1 line, and upgrading to a Gold Membership within the  
2 same session activated by clicking on that link or  
3 within the same day of clicking on that link; or

- 4 3. Upgrading to a Gold Membership within the same day  
5 of receiving a Guestbook email or Connections email  
6 that included a Guestbook subject line.

7 The following Persons are expressly excluded from the Settlement Class and Settlement  
8 Subclass:

9 Defendants, all present or former officers and/or directors of Defendants,  
10 Class Counsel, the Judge of this Court, the Judge's family and staff,  
11 Defendants' counsel of record, and all Persons who make a timely and  
12 valid election to be excluded from the Settlement Class and Settlement  
13 Subclass in accordance with the provisions of the Individual Notice to  
14 Settlement Class and Individual Notice to Settlement Subclass.

15 The Court appoints David Catapano and Anthony Michaels as representatives for  
16 the Settlement Class and Settlement Subclass and Class Counsel as counsel for the  
17 Settlement Class and Settlement Subclass.

18 4. **Final Approval Hearing.** A final approval hearing (the "Settlement  
19 Hearing" or "Final Hearing") shall be held before this Court on October 27, 2010, at  
20 10:00 a.m., to determine whether the Settlement Agreement is fair, reasonable and  
21 adequate and should be approved. The Settlement Hearing may be postponed, adjourned,  
22 or continued by order of the Court without further notice to the Settlement Class and  
23 Settlement Subclass. After the Settlement Hearing, the Court may enter a Final Approval  
24 Order and Judgment that will fully and finally adjudicate the rights of the Settlement  
25 Class and Settlement Subclass members and the named parties to this lawsuit.

26 5. **Notice.** No later than ninety (90) days after the date of entry of this Order  
27 (the "Notice Date"), the Settlement Administrator shall have a copy of the Individual  
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1 Notice to Settlement Class and Settlement Class Claim Form and the Individual Notice to  
2 Settlement Subclass and Settlement Subclass Claim Form in substantially the same form  
3 as Exhibits A through Exhibit D of the Settlement Agreement sent or made available via  
4 electronic mail to all members of the Settlement Class and Settlement Subclass. In  
5 addition, the Settlement Administrator shall provide publication notice to potential  
6 Settlement Class members and Settlement Subclass members by a *Wall Street Journal*  
7 newspaper classified advertisement no smaller than one-eighth of a page, and establish a  
8 website with settlement and claim administration information, within 30 days of the date  
9 of entry of this Order.  
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12 6. **Findings Concerning Notice.** The Court finds that electronic notice,  
13 together with the proposed form of published notice, is the best practicable notice under  
14 the circumstances and is as likely as any other form of notice to apprise potential  
15 Settlement Class and Settlement Subclass members of the Settlement Agreement, and  
16 their rights to opt out and to object. The Court further finds that such notice is  
17 reasonable, that it constitutes adequate and sufficient notice to all persons entitled to  
18 receive notice, and that it meets the requirements of Due Process.  
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21 7. **Papers in Support of Settlement.** The parties to the Settlement  
22 Agreement may file additional papers in support of the proposed settlement seven (7)  
23 calendar days prior to the Final Hearing.  
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25 8. **Right to Exclude.** Any Settlement Class or Settlement Subclass member  
26 may choose to be excluded from the Settlement Class or Settlement Subclass, as the case  
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1 may be, by signing and submitting to the Settlement Administrator a Request For  
 2 Exclusion postmarked no later than thirty (30) days after the Notice Date, or by sending  
 3 an e-mail to the appropriate address, as set forth more fully in the Notice to Settlement  
 4 Class and Notice to Settlement Subclass.

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 6 9. **Objections and Appearances**

7 (a) **Written Objections.** Any Settlement Class or Settlement Subclass  
 8 member may object to the fairness, reasonableness or adequacy of the Settlement  
 9 Agreement. Settlement Class and Settlement Subclass members may do so either on their  
 10 own or through counsel hired at their own expense. Any Settlement Class or Settlement  
 11 Subclass member who wishes to make a written objection to the Settlement Agreement  
 12 must serve a written statement of objection as set forth in the Notice along with any other  
 13 supporting materials, papers or briefs that he or she wishes the Court to consider  
 14 postmarked no later than thirty (30) calendar days after the Notice Date. The objection  
 15 must be sent to the Clerk of the Court **and** he or she must also serve such papers so as to  
 16 be received by Class Counsel and counsel for Defendants, as set forth below, no later  
 17 than thirty (30) calendar days after the Notice Date:

18 Mark A. Griffin and Amy Williams-Derry  
 19 Keller Rohrback L.L.P.  
 1201 Third Avenue, Suite 3200  
 20 Seattle, WA 98101-3052

21 **and to**

22 Stellman K. Keehnel and Russ Wuehler  
 23 DLA Piper LLP (US)  
 701 Fifth Avenue, Suite, 7000  
 24 Seattle, Washington 98104-7044

25 (b) **Appearance at Settlement Hearing.** Any Settlement Class or  
 26 Settlement Subclass member who has served an objection may appear at the Settlement  
 27 Hearing, either in person or through counsel hired at the Settlement Class or Settlement  
 28 Subclass member's expense, and object to the fairness, reasonableness or adequacy of the  
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1 Settlement Agreement. Any Settlement Class or Settlement Subclass member who  
2 chooses to be heard must send a written notice of intent to appear to the Clerk of the  
3 Court and on Class Counsel at the addresses listed above so as to be received no later  
4 than thirty (30) calendar days after the Notice Date.

5 10. **Effect of Failure to Finally Approve the Settlement Agreement.** If (i)  
6 the Court does not finally approve this Settlement Agreement, (ii) the Court does not  
7 enter the Final Approval Order and Judgment dismissing the Consolidated Lawsuit with  
8 prejudice and without leave to amend, (iii) Defendants terminate the Settlement  
9 Agreement pursuant to Section 16.4 of the Settlement Agreement, or (iv) the Settlement  
10 Agreement does not become final for any other reason, then:  
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12 (a) The Settlement Agreement shall automatically become null and void and  
13 have no further force or effect, and all proceedings that have taken place with regard to  
14 this Settlement Agreement and the settlement shall be without prejudice to the rights and  
15 contentions of the Parties hereto;  
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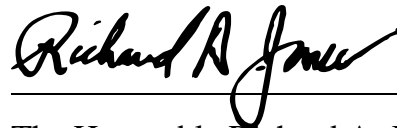
17 (b) The Settlement Agreement, all of its provisions (including, without  
18 limitation, any provisions concerning class certification), and all negotiations, statements  
19 and proceedings relating to the Settlement Agreement shall be without prejudice to the  
20 rights of any of the Parties, each of whom shall be restored to their respective position as  
21 of December 18, 2009;  
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23 (c) The Settlement Agreement, any provision of the Settlement Agreement  
24 (including, without limitation, the provisions concerning class certification), and the fact  
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1 of the Settlement Agreement having been made, shall not be admissible or entered into  
2 evidence for any purpose whatsoever; and

3 (d) Any judgment or order entered in connection with the Settlement  
4 Agreement, including, without limitation, any order certifying the Settlement Class  
5 and/or Settlement Subclass, will be vacated and will be without any force or effect.  
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7 DATED this 19th day of April, 2010.

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10 The Honorable Richard A. Jones  
11 United States District Judge  
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